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NEW MEMBER ORIENTATION

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Ethics, Open Meetings, and Public
Records

Friday, November 13, 2020
10 a.m.



Topics

- Banned Expenditures and Gift Reporting
- Employment Issues
- General Conflicts of Interest
- Voting Conflicts
- Open and Noticed Meetings
- Public Records



Banned Expenditures and Gift Reporting

General Rules

- The only things you may not accept are:
 - Expenditures by a lobbyist or principal
 - Gifts from political committees
 - Gifts or compensation intended to influence your official actions
- If you are permitted to and do accept a gift, you might have to report it.



Expenditure Ban: Statutory Language

“[N]o lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.”



Expenditure Ban: Elements

The statute requires four elements:

1. An expenditure
2. Made by a lobbyist or principal
3. For the purpose of lobbying
4. Knowingly accepted by you, directly or indirectly



Expenditure Ban: Expenditures

- What is an “expenditure”? Anything of economically ascertainable value given by a lobbyist or principal for the purpose of lobbying.
- Primary exceptions:
 - Lawful campaign contributions
 - Public-legislative use from a government entity
 - Exchanges in which you give equal or greater value
- There is no *de minimus* exception—even a cup of coffee



Expenditure Ban: Equal or Greater Value

- If you contemporaneously give equal or greater value (e.g., paying a fair-market value cover charge for an event), that's an exchange, not a lobbying expenditure.



Expenditure Ban: Lobbying

What is lobbying?

- Attempting to influence legislative action or nonaction through oral or written communication
- Attempting to obtain a member's goodwill



Expenditure Ban: Lobbyists and Principals

What is a lobbyist?

- A person who is paid to lobby

What is a principal?

- A person or business that employs or retains a lobbyist



Expenditure Ban: “For the Purpose of Lobbying”

Is the expenditure “for the purpose of” obtaining your goodwill?

- Rule of thumb: assume that it is

But do the facts strongly suggest a different purpose?

- Examples



Expenditure Ban: Knowledge

How do you know a person or entity is a lobbyist or principal?

- Willful ignorance and the duty to inquire
- When in doubt, check “Online Sunshine” at floridalobbyist.gov or ask the General Counsel’s Office



Expenditure Ban: What to Do

- When in doubt, don't accept. Call the General Counsel's Office.
- If you receive a lobbying expenditure (e.g., a gift mailed to you):
 - Return the expenditure and document the return
 - Pay equal or greater compensation
 - Contact the Sergeant's Office



Expenditures: Private Aircraft

“A member may not fly on an aircraft that is a private conveyance owned, leased, or procured by a lobbyist, a lobbying firm, or a principal, regardless of whether the member pays for the flight.”



Gift Disclosures: General

- Different statutory paradigm from lobbying expenditure ban: you can accept *most* gifts.
- If you can and do accept a gift, and the gift exceeds \$100 in value, you must disclose it to the Commission on Ethics.



Prohibited Gifts: Political Committees

A representative “is prohibited from soliciting or knowingly accepting, directly or indirectly, any gift from a political committee.”

§ 112.31485, Fla. Stat.



Prohibited Gifts: Bribery

“No public officer . . . Shall solicit or accept anything of value . . . , including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer . . . would be influenced thereby.”

§ 112.313(2), Fla. Stat.



Gift Disclosures: What Constitutes a Gift?

Gifts

- Virtually anything of value given to you

Common Exceptions

- Compensation
- Campaign Contributions
- Personalized awards
- Gifts from relatives



Gift Disclosures: Who is a Relative?

For purposes of the gift rule, relatives include your:

- Immediate and lineal family members
- Family by marriage (spouses, in-laws, and step-family)
- Fiancé
- Roommates

NOT your friends



Gift Disclosures: What to Do

- Does the item fall within an exception?
- If not, assess the gift's value (cost to the donor).
- If the gift cost more than \$100, you have two options:
 - (1) Within 90 days of receiving the gift, pay the value down to less than \$100 *or*
 - (2) Report the gift to the Commission on Ethics.
- When to report? By the last day of the quarter *after* you receive the gift. If you receive a gift in Q1, report it by the end of Q2.



Employment Conflicts: Generally

- Florida has a citizen-legislature. But you cannot be paid to:
 - Represent others before state agencies
 - Represent others before local governments
 - Represent others before the Legislature
- If you have a question about a particular employment relationship, ask the General Counsel's Office.



Employment Conflicts: State Agencies

“No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.”

Florida Constitution, Article II, §8(e)



Employment Conflicts: Local Governments

“A member shall . . . [n]ot accept any compensation to lobby any local government or governmental agency, except for the provision of licensed professional services under circumstances that require registration as a lobbyist.”



Employment Conflicts: Lobbying the Legislature

A Member may not maintain employment that “creates a continuing or frequently recurring conflict of interest.”

§ 112.313(7), Florida Statutes.

See *also* House Rule 15.4(c).



Conflicts of Interest: Contracting with the Legislature

You, certain members of your family, and certain businesses in which you and your family are involved “may not contract with the Legislature.”

§ 112.313(3), Florida Statutes

Exceptions for pre-existing contracts



Voting Conflicts: Generally

- Unless you *must* recuse, you *must* vote – no middle ground.
- If you personally have a conflict, you must recuse from voting and disclose the conflict.
- If certain individuals close to you have a conflict, you must vote and also must disclose the conflict.



Voting Conflicts: Rules

- When must a member recuse and disclose?

If he or she **knows** a matter would inure to his or her **special private gain or loss**.

- When must a member vote and disclose?

If he or she **knows** a matter would inure to **the special private gain or loss of:**

- The member's relative, business associate, or employer.
- A client or principal of the member or certain members of his or her family.



Voting Conflicts: Special Private Gain or Loss

- A “**private gain or loss**” means an **economic** benefit or injury.
- Whether a private gain or loss is “**special**” depends on several factors:
 - The size of the class affected by the matter;
 - The nature of the interests involved;
 - The degree of effect on the interests of the class as a whole; and
 - The degree to which the matter would benefit or harm the member relative to the class as a whole.



Conflicts of Interest: Misuse of Public Position

“No public officer . . . shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.”

§ 112.313(6), Florida Statutes



Open Meetings

A meeting must be open if:

- Three or more members participate, *and*
- The meeting was **prearranged** for the purpose of **agreeing to take formal legislative action on pending** legislation or amendments.



Open Meetings

What does “open” mean?

- Members must provide reasonable access to a member of the public if the person has requested admission.
- The meeting may not be in the Member’s Lounge or another location closed to the public.
- The meeting may not be at any location that a participating member knows prohibits admission on the basis of a protected trait.



Public Records: General Rule

- All records developed “in connection with” official legislative business shall be available to the public upon request.
- Exemptions
- Confidential records and information
- Record retention



Public Records: What is a Public Record?

- The form and location of the record are irrelevant; only the content matters – records created “in connection with” official legislative business.
- Most common: E-mails, text messages, paper records
- Personal devices and accounts
- But: notes made for personal use
- You are not required to create a record that does not exist.



Public Records: Examples

- Public records:
 - Questions about a bill sent to your private email account.
 - Lobbyist texts you about a bill.
- Non-public records:
 - Your family e-mails your House account regarding dinner plans.
 - Lobbyist texts you about the NFL draft.



Public Records: Confidential and Exempt

- Not all public records are subject to disclosure.
 - Exempt records (not required to disclose)
 - Confidential records (cannot disclose)
- Best practice: when you receive a request, contact the Office of Open Government



Public Records: Retention

- Records required to be created by House Rules or records of vital, permanent, or archival value **must** be maintained.
- Records “no longer needed for any purpose and that do not have sufficient administrative, legal, or fiscal significance” **shall** be disposed of systematically.



Public Records: What to Do

- Treat every request for records seriously, even requests not made in writing.
- You are the custodian of your own records and have a duty to respond.
- Retain records once they are requested.
- Respond to the request as quickly as practical:
 - Contact the Office of Open Government – (850) 717-5650
 - For legal questions, contact the Office of the General Counsel.
 - Daniel Bell or Michael Maida—(850) 717-5500



Where to Go for Help

Office of the General Counsel

(850) 717-5500

Suite 418, The Capitol

Daniel Bell, General Counsel

Michael Maida, Deputy General Counsel